

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION II

6/28/93

IN THE MATTER OF:

Volney Landfill, Volney, New York

County of Oswego;

Armstrong World Industries, Inc.;

Miller Brewing Company;

Alcan Aluminum Corporation;

Allied-Signal, Inc.;

American National Can Company;

American Standard, Inc.; AMF, Inc.;

Ashland Chemical Company; Boise Cascade

Corp.; Charles W. Breneman Company;

Bristol-Myers Squibb Company;

Case Hoyt Corp.; Champion International

Corporation; Columbia Mills,

Incorporated; E.I. DuPont de Nemours &

Co.; Floquil Polly S Color Corporation;

GAF Corporation; General Electric

Company; Jones Chemicals, Inc.;

Masonite Corporation; Milton Bradley

Division, Hasbro, Inc.; Monsanto

Company; Morrill Press; Niagara Mohawk

Power Corporation; Pfizer, Inc.;

Revere Ware Corporation; Rotron, Inc.;

Schenectady Chemicals, Inc.;

Sealright Co., Inc.; Shell Oil Company;

State University of New York;

Smith Corona Corporation.

Respondents

Proceeding Under Sections 104 and 122

of the Comprehensive Environmental

Response, Compensation, and Liability

Act, as amended (42 U.S.C §§ 9604,

9622)

SDMS Document



98470

Index No. II

CERCLA-104-93-0202

ADMINISTRATIVE ORDER ON CONSENT  
FOR SUPPLEMENTAL PRE-REMEDIAL DESIGN STUDY  
Operable Unit No. 1

## I. INTRODUCTION

1. This Administrative Order on Consent ("Consent Order" or "Order") is entered into by the United States Environmental Protection Agency ("EPA") and the above-captioned Respondents ("Respondents"). The Consent Order concerns the performance of a Supplemental Pre-Remedial Design Study ("SPRDS") and reimbursement for all costs incurred by EPA in connection with the SPRDS. The SPRDS is intended to develop the data that will be necessary for the preparation of a Remedial Design ("RD") for Operable Unit No. 1 (source control) (hereinafter "Source Control RD") to prevent further potential contaminant migration from the Volney Landfill, located in the Town of Volney, Oswego County, New York, and to eliminate the direct contact threat posed by the Volney Landfill. An investigation of the pathways of contamination in the shallow and bedrock groundwater aquifers and stream/wetland ecosystems downgradient of the Volney Landfill was the subject of an earlier Administrative Order on Consent issued by EPA on September 28, 1990 ("RI/FS AOC") to various persons enumerated therein. The Volney Landfill and the pathways of contamination, including all suitable areas in very close proximity to the pathways of contamination necessary for the investigation of such pathways were collectively defined in the RI/FS AOC as the "Site". For the purposes of this Order the terms "Volney Landfill" and "Site" are used interchangeably.

## II. JURISDICTION

2. This Consent Order is issued to Respondents under the authority vested in the President of the United States by Sections 104 and 122 of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, (CERCLA) 42 U.S.C. §§ 9604, 9622. This authority was delegated to the Administrator of EPA on January 23, 1987, by Executive Order 12580, 52 Fed. Reg. 2926 (1987), and further delegated to Regional Administrators on September 13, 1987, by EPA Delegation No. 14-14-C.

3. The Respondents agree to undertake all actions required by the terms and conditions of this Order. Solely for purposes of this Order, Respondents consent to and agree not to contest the authority or jurisdiction of the Regional Administrator of EPA Region II to issue or enforce this Order, and also agree not to contest the validity or terms of this Order in any action to enforce its provisions.

4. Except as otherwise explicitly provided in this Order, entry into this Order, and taking actions under this Order, shall not constitute an admission, adjudication, or waiver of (a) any right or defense of Respondents with respect to any present or future alleged liability for conditions at or near the Site; or (b) any fact or conclusion of law relating to any present or

future liability arising out of conditions at or near the Site. Nothing in this Order shall constitute an admission by Respondents of the findings of fact, the conclusions of law, or the determinations made by EPA in this Order, or constitute evidence of any wrongdoing or misconduct or liability to any person on the part of Respondents. Furthermore, the entry into this Order and taking actions under this Order shall not be admissible in evidence against the Respondents, nor shall it in any way diminish the availability to Respondents in any judicial or administrative proceeding of any factual or legal defense that would otherwise be available in any judicial or administrative proceeding, other than a proceeding to enforce this Order or a judgment relating to it.

### III. PARTIES BOUND

5. This Order shall apply to and be binding upon the Respondents, their agents, successors, and assigns. Respondents shall provide a copy of this order to any successors or assigns prior to transfer of ownership rights. Respondents agree to instruct their officers, directors, employees, and agents involved in the performance of the work required by this Order to cooperate in carrying out the obligations of Respondents under this Order. Respondents agree that their officers, directors, employees, and agents involved in the performance of the work required by this Order shall take all necessary steps to accomplish the performance of said work in accordance with this Order. Respondents are jointly and severally responsible for carrying out all actions required of them by this Order. The signatories to this Order certify that they are authorized to execute and legally bind the parties they represent to this Consent Order. No change in the ownership or corporate status of the Respondents or of the Volney Landfill shall alter Respondents' responsibilities under this Order.

6. Respondents shall provide a copy of this Order to all contractors, subcontractors, laboratories, and consultants which are retained to conduct any work performed under this Order, within 14 days after the effective date of this Order or the date of retaining their services, whichever is later. Respondents shall provide in any such contracts that work done in accordance therewith shall be in compliance with this Order including, but not limited to, Sections XI and XII hereof. Notwithstanding the terms of any contract, Respondents are responsible for compliance with this Order and for ensuring that their employees, contractors, consultants, subcontractors, and agents comply with this Order.

#### **IV. STATEMENT OF PURPOSE**

7. In entering into this Order, the objectives of EPA and the Respondents are: (a) to develop the hydrogeologic and other technical data necessary for the subsequent development of the RD for the implementation of the remedial action for the source control operable unit of the Volney Landfill Site set forth in the Record of Decision ("ROD") dated July 31, 1987, as affirmed by the Post-Decision Document of Sample Results and Selected Remedy, Volney Landfill Site, Source Control Operable Unit ("PDD") on September 29, 1989; (b) to provide for reimbursement to EPA of response and oversight costs incurred by EPA with respect to this Order; and (c) to avoid protracted litigation.

8. The activities conducted under this Consent Order are subject to approval by EPA and shall provide information necessary for the design and implementation of the remedial actions set forth in the ROD. The activities conducted by or on behalf of Respondents under this Consent Order shall be conducted in compliance with all applicable written EPA guidance, policies and procedures, and in a manner that is consistent with CERCLA and the National Oil and Hazardous Substances Pollution Contingency Plan ("NCP"), 40 C.F.R. Part 300.

#### **V. EPA FINDINGS OF FACT AND CONCLUSIONS OF LAW**

9. The Volney Landfill consists of 55 acres located in a rural area of the Town of Volney, Oswego County, New York, approximately 2 miles northeast of the City of Fulton, 25 miles northwest of the City of Syracuse and 10 miles southeast of Lake Ontario.

10. Operations at the Volney Landfill were initiated in 1969 in a former sand and gravel pit located in the southeast corner of the Volney Landfill and thereafter progressed generally northward. From 1969 until 1974, the landfill was operated by the Oswego Valley Solid Refuse Disposal District Board. The Board consists of the City of Fulton, the Village of Phoenix, and the Towns of Granby, Schroepfel and Volney. In early 1975, Oswego County purchased the Volney Landfill from the Board and conducted waste disposal operations at the Volney Landfill until 1983. In the fall of 1985, closure operations for the Volney Landfill were completed by Oswego County, pursuant to a closure plan required by the New York State Department of Environmental Conservation ("NYSDEC").

11. Most of the waste materials disposed of in the Volney Landfill during active operations from 1969 to 1983 consisted of residential, commercial, institutional, and industrial wastes.

12. Respondents Allied-Signal, Inc.; American National Can Company; American Standard, Inc.; AMF, Inc.; Ashland Chemical Company; Boise Cascade Corp.; Charles W. Breneman Company; Bristol-Myers Squibb Company; Case Hoyt Corp.; Champion International, Corporation; Columbia Mills, Incorporated; E.I. DuPont de Nemours & Co.; Floquil Polly S Color Corporation; GAF Corporation; General Electric Company; Jones Chemicals, Inc.; Milton Bradley Division, Hasbro, Inc.; Monsanto Company; Morrill Press; Niagara Mohawk Power Corporation; Pfizer, Inc.; Revere Ware Corporation; Rotron, Inc.; Schenectady Chemicals, Inc.; Sealright Co., Inc.; Shell Oil Company; State University of New York; and Smith Corona Corporation arranged with Pollution Abatement Services of Oswego, Inc. ("PAS") for disposal of industrial wastes containing hazardous substances. Respondent Masonite Corporation arranged for disposal of industrial wastes containing hazardous substances with Respondent Ashland Chemical Company. During the period from 1974-1975, PAS transferred an estimated 5,000-8,000 drums containing residues and/or varying amounts of "hazardous substances" within the meaning of Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), from its Oswego facility to the Volney Landfill.

13. During the period of active landfill operations, Respondents Armstrong World Industries, Inc., Miller Brewing Company, and Alcan Aluminum Corporation arranged for the disposal at the Volney Landfill of industrial wastes containing "hazardous substances" within the meaning of Section 101(14) of CERCLA, 42 U.S.C. §9601(14).

14. The Volney Landfill expanded in the mid-1970s to the central and northern parts of its current configuration. After the County purchased the Volney Landfill, surficial sand and gravel was removed and the underlying glacial till was graded towards a channelized drainage system in the Volney Landfill.

15. On March 14, 1979, the County and the NYSDEC entered into a consent order for the development of a closure plan for the Volney Landfill. Pursuant to this NYSDEC-required closure plan, the County installed a leachate collection system in the northern portion of the Volney Landfill in 1982 and a combination soil barrier and synthetic membrane cap over the relatively flat top area of the landfill and a two foot soil cap over the relatively steep side slopes of the landfill in 1985.

16. The Volney Landfill was placed on the National Priorities List ("NPL") in June 1986, which list is established under Section 105(a)(8)(B) of CERCLA, 42 U.S.C. § 9605(a)(8)(B), and which is set forth at 40 C.F.R. Part 300, Appendix B.

17. Pursuant to a cooperative agreement with EPA, the NYSDEC, through a contractor, completed an RI/FS for the Source Control Operable Unit ("O.U. No. 1") in May 1987.

18. On July 31, 1987, EPA issued a Record of Decision ("ROD") for O.U. No. 1. The ROD required, inter alia, the supplemental capping of the landfill side slopes, the installation of a leachate collection system and slurry wall around the northern and southwestern sections of the landfill and the on-site or off-site treatment of leachate.

19. Subsequent to the signing of the ROD, EPA learned that the NYSDEC had not performed a quality assurance/quality control ("QA/QC") review of the analytical data obtained as part of the RI/FS. Following a QA/QC review of the data, NYSDEC concluded that the data were invalid. EPA, therefore, tasked its contractor, Ebasco Services, Inc. ("Ebasco") to resample the groundwater monitoring wells, surface water, sediments, and leachate.

20. The analytical data compiled by Ebasco were incorporated into EPA's Post-Decision Document of Sample Results and Selected Remedy, Volney Landfill Site, Source Control Operable Unit ("PDD") on September 29, 1989. The PDD summarizes the quality assured analyses of the resampling of groundwater, surface water, sediments, and leachate at, and downgradient from, the Volney Landfill. The groundwater samples detected the presence, inter alia, of the following "hazardous substances" within the meaning of Section 101(14) of CERCLA, 42 U.S.C. § 9601(14): acetone, 2-butanone (methyl ethyl ketone), bis (2-ethylhexyl) phthalate, arsenic, cadmium, chromium, and mercury. In addition, "hazardous substances" were detected in surface water and sediment samples downgradient from the Volney Landfill.

21. Exposure to the various hazardous substances detected at the Volney Landfill by direct contact or ingestion can cause a variety of adverse human health effects.

22. The Site is a "facility" as defined in section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

23. Each of the Respondents is a "person" within the meaning of Section 101(21) of CERCLA, 42 U.S.C. § 9601(21). Respondent County of Oswego is the present owner or operator of the Volney Landfill, and was an owner or operator of the Volney Landfill at a time when industrial wastes containing hazardous substances were disposed there and is accordingly a responsible party under Section 107(a)(1) and (2) of CERCLA, 42 U.S.C. §§ 9607(a)(1) and (2). Each of the remaining Respondents listed in Paragraphs 12 and 13, above, arranged for the disposal or treatment of industrial wastes containing hazardous substances which came to be disposed of at the Volney Landfill, and is accordingly a responsible party under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a).

24. Many of the wastes disposed of at the Volney Landfill, including those listed above, contained "hazardous substances" as defined in section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

25. The presence of hazardous substances at the Volney Landfill or the past, present or potential migration of hazardous substances currently located at or emanating from the Volney Landfill constitute actual and/or threatened "releases," as defined in section 101(22) of CERCLA, 42 U.S.C. § 9601(22), of hazardous substances.

26. After the ROD was signed and during the evaluation process culminating in the PDD, information regarding the remedy selected in the ROD and confirmed in the PDD was made available to EPA by the public. Based upon this information, EPA determined in the PDD that, during the pre-design phase for the first operable unit remediation, it would conduct leachate generation and treatability studies to evaluate the cost-effectiveness of the slurry walls proposed in the ROD as well as the alternatives of on- and off-site leachate treatment. Some of these studies were conducted by Camp, Dresser, and McKee ("CDM"), an EPA contractor, and were concluded in May 1991.

27. However, after review of the CDM studies, EPA concluded that (i) additional work was required to, among other things, develop a hydrogeologic data base for the Site sufficient for the design of the remedy proposed in the ROD and the PDD; (ii) this additional work should be performed in a supplemental pre-design study ("SPRDS"); and (iii) the SPRDS work should be incorporated within the framework of a Remedial Design Work Plan (hereinafter the "RD Work Plan") to avoid duplication of work.

28. EPA has drafted an RD Work Plan which sets forth the objectives for preparation of the Source Control RD. The RD Work Plan is attached hereto and incorporated herein as Attachment 1. The RD Work Plan includes detailed descriptions of the tasks required for the completion of the SPRDS which is the subject of this Consent Order. The SPRDS task requirements are set forth in Subsection 3.3 (Data Needs), 4.3 (Task 3-Data Acquisition), 4.4 (Task 4-Sample Analysis/Validation), 4.5 (Task 5-Data Evaluation), and 4.6 (Task 6-Cost-Effectiveness and Treatability Studies) of the RD Work Plan. The subsequent sections of the RD Work Plan (which are not the subject of this Consent Order) describe how the data to be generated by the SPRDS are anticipated to be utilized during the subsequent Remedial Design phase of the project.

29. The purpose of the SPRDS is to provide sufficient data so that the Source Control RD can be performed upon completion of the SPRDS. These data requirements are set forth in more detail in Section VII (Work to be Performed), Item 33 herein.

30. The actions required by this Consent Order are necessary to protect the public health or welfare or the environment, are in the public interest, 42 U.S.C. § 9622(a), are consistent with CERCLA and the NCP, 42 U.S.C. §§ 9604(a)(1), 9622(a), and are expected to expedite effective remedial action and minimize litigation, 42 U.S.C. § 9622(a). Respondents have been given an opportunity to discuss with EPA the basis for issuance of this Order and its terms.

#### VI. NOTICE

31. Notice of this Consent Order and the negotiations preceding its issuance were provided to the NYSDEC. Pursuant to Section 122(j) of CERCLA, 42 U.S.C. §9622(j), EPA has notified all known natural resource trustees of negotiations concerning this Site.

#### VII. WORK TO BE PERFORMED

32. All work performed under this Consent Order shall be under the direction and supervision of qualified personnel. Within 30 days of the effective date of this Order, the Respondents shall notify EPA in writing of the names and qualifications of the contractors, subcontractors, consultants and laboratories to be used in carrying out such work, including the names, titles and qualifications of the key personnel responsible for the performance of such work. The qualifications of the persons undertaking the work for Respondents shall be subject to EPA's review, for verification that such persons meet minimum technical background and experience requirements. This Order is contingent on Respondents' demonstration to EPA's satisfaction that Respondents are qualified to perform properly and promptly the actions set forth in this Consent Order. EPA's approval of Respondents' contractors, subcontractors, consultants, and laboratories, and key personnel thereof, shall not be unreasonably withheld. If EPA disapproves of any organization(s)' or person(s)' technical qualifications, it shall do so in writing, providing its reasons for such disapproval. Respondents shall notify EPA of the identity and qualifications of the replacements within 30 days of the written notice. If EPA subsequently disapproves of the replacements, EPA reserves the right to terminate this Order and to conduct the complete SPRDS, and to seek reimbursement for costs and penalties from Respondents. During the course of the SPRDS, Respondents shall notify EPA in writing of any changes or additions in the key personnel used to carry out such work, providing their names, titles, and qualifications. EPA shall have the same right to approve changes and additions to personnel as it has hereunder regarding the initial notification.



33. Respondents shall conduct activities and submit deliverables as provided below and in Subsections 3.3, 4.3 (Task 3), 4.4 (Task 4), 4.5 (Task 5), and 4.6 (Task 6) of the attached RD Work Plan which is incorporated by reference. All such work shall be conducted in accordance with CERCLA, the NCP, and all applicable and appropriate written EPA guidance, including, but not limited to, the "Superfund Remedial Design and Remedial Action Guidance, (OSWER Directive # 9355.0-4A)" (hereinafter, the "RD/RA Guidance"), guidance referenced therein, and guidance referenced in the RD Work Plan. Respondents shall conduct activities and submit deliverables to EPA in accordance with any amendments or modifications to such guidance which EPA identifies to Respondents to the extent such amendments or modifications occur prior to the completion of the activities or deliverables to which they apply. The general activities that Respondents are required to perform are identified below, followed by a list of deliverables. The tasks that Respondents must perform are described more fully in the RD Work Plan and guidances. The activities and deliverables identified below are provisions in the RD Work Plan, and shall be submitted to EPA as provided. All work performed under this Consent Order shall be in accordance with the schedules herein, and in full accordance with the standards, specifications, and other requirements of the RD Work Plan as initially approved by EPA, or as it may be amended as provided in this Order. For the purposes of this Order, the computation of any time periods defined in terms of days shall commence with the next day following the day of the act, event, or default from which the designated time period begins to run and shall include the last day of the period so computed, unless it is a Saturday, a Sunday, or a federal or State legal holiday, in which event the period runs until the end of the next day which is not a Saturday, a Sunday, or a federal or State legal holiday.

A. PROJECT PLANNING. EPA has determined the site specific objectives of the SPRDS and has devised a general management approach for this site, as stated in the attached RD Work Plan. Within thirty (30) days of the effective date of this Consent Order, Respondents shall submit to EPA, for review and approval, a Project Operations Plan ("POP") that encompasses the requirements and includes the procedures to be used during the field activities associated with the SPRDS which are set forth below and described in more detail in the subsections of the attached RD Work Plan enumerated in paragraph 33 above. As set forth in the RD Work Plan, such field activities are to include, but are not necessarily limited to, a monitoring well integrity survey, the installation of additional monitoring wells, field permeability testing, leachate and groundwater sampling, surface soil/bedrock samples, and test pits for the leachate collection systems described in the ROD.

The POP shall include the following items:

- i. a map depicting sampling locations;
- ii. an overall Management Plan, including the identification of contractors and subcontractors and their respective responsibilities for performance of sampling, analysis and monitoring activities;
- iii. a schedule for performance of specific tasks;
- iv. a Quality Assurance Project Plan ("QAPP")

The QAPP shall include:

- a. Project description;
- b. Project organization and responsibilities, including curricula vitae of key personnel;
- c. Quality assurance objectives for measurement;
- d. Sampling procedures;
- e. Sample custody;
- f. Calibration procedures;
- g. Analytical procedures;
- h. Data reduction, validation and reporting;
- i. Internal quality control;
- j. Performance and systems audits;
- k. Preventative maintenance;
- l. Data assessment procedures;
- m. Corrective actions; and,
- n. Quality assurance reports.

The QAPP shall be completed in accordance with the EPA publication Test Methods for Evaluating Solid Waste ("SW-846") (November 1986, or as updated) and the EPA documents entitled, Interim Guidelines and Specifications for Preparing Quality Assurance Project Plans, USEPA QAMS-005/80, and Guidance for Preparation of Combined Work/Quality Assurance Project Plans for

Environmental Monitoring (USEPA, Office of Water Regulations and Standards, May 1984).

Respondents shall use Quality Assurance/Quality Control ("QA/QC") procedures in accordance with the QAPP submitted and approved by EPA pursuant to this Order, and shall use standard EPA Chain of Custody procedures, as set forth in the National Enforcement Investigations Center Manual for the Evidence Audit, published in September 1981 (or as revised and updated), and SW-846, for all sample collection and analysis activities conducted pursuant to this Order. In addition, Respondents shall:

aa. Ensure that all contracts with laboratories used by Respondents for analysis of samples taken pursuant to this Order provide for access at all reasonable times for EPA personnel and EPA-authorized representatives to assure the accuracy of laboratory results related to the Site;

bb. Use best efforts to ensure that laboratories utilized by Respondents for analysis of samples taken pursuant to this Order perform all analyses according to accepted EPA methods. Accepted EPA methods consist of those methods which are documented in the "Contract Lab Program Statement of Work for Inorganic Analysis" and the "Contract Lab Program Statement of Work for Organic Analysis," dated February, 1988 (or as updated), or any alternative method that has been approved by EPA for use during this project. Respondents agree to terminate the use of any laboratory that does not perform analyses according to accepted EPA methods;

cc. Ensure that all laboratories used by Respondents for analysis of samples taken pursuant to this Order participate in an EPA Contract Lab Program ("CLP"), or CLP-equivalent, QA/QC program; and

dd. Ensure that the laboratories used by Respondent for analysis of samples taken pursuant to this Order accept and test Performance Evaluation samples that EPA may submit to those laboratories for purposes of demonstrating that the laboratories meet EPA-

approved QA/QC requirements. Respondents agree to terminate the use of any laboratory not performing satisfactorily on such performance evaluation.

v. a Health and Safety Plan that shall conform to 29 CFR §1910.120, "OSHA Hazardous Waste Operations Standards," and the EPA guidance document, "Standard Operating Safety Guides" (OSWER, 1988);

vi. an Emergency Response Plan; and

vii. the curriculum vitae of each professional expected to participate in on-site monitoring and field investigation activities, with a provision for submitting further curriculum vitae as other professionals become or are about to become involved in these activities.

If EPA disapproves of or requires revisions to the POP, in whole or in part, which disapproval or required revision shall be provided in writing with reasons for the disapproval or directions for revisions to make the submittal approvable, Respondents shall amend and submit to EPA a revised POP which is responsive to the directions in all EPA comments, within 30 days of receiving EPA's comments.

The POP, as approved by EPA following any required revisions, shall be deemed to be incorporated by reference herein.

#### B. PRELIMINARY DESIGN DATA EVALUATION REPORT

Following EPA's written approval of Respondents' POP, and EPA's approval of all organizations and key personnel in accordance with Paragraph 32, Respondents shall implement the provisions of Subsections 3.3, 3.4 (except for items which the Work Plan requires to be completed in the RD phase), 4.1 (except for items which the Work Plan requires to be completed in the RD phase), 4.2 (except for items which the Work Plan requires to be completed in the RD phase), 4.3 (Task 3), 4.4 (Task 4), 4.5 (Task 5), and 4.6 (Task 6) of the attached RD Work Plan and the POP, in accordance with the schedule in the approved POP. Respondents shall provide EPA with validated analytical data within seventy-five (75) days of each sampling activity, in a form showing the location, medium and results. Within seven (7) days of completion of field activities, Respondents shall notify EPA in writing.

Within sixty (60) days of completion of validation of the final set of field data, Respondents shall submit to EPA a Preliminary Design Data Evaluation Report ("Preliminary DDER") which will include two sections:

(i) Design Data Evaluation. This section shall include: a total water balance for the Site, as per Subsection 3.3.4 of the Work Plan, describing all aspects of leachate generation (and losses) including, but not limited to, data on groundwater in-flow and out-flow including possible artesian conditions, and the impact of the various combination of design options on leachate generation; the development of a model leachate for evaluating each different leachate treatment option; an analysis of existing installations; supplemental side-capping design and side-slope stability information; chemical analysis data for new and existing wells; an evaluation of potential overburden and bedrock contamination; water flow patterns from the site; the recommended location of the slurry walls and leachate collection systems described in the ROD based upon the geotechnical data developed during the data acquisition phase of the SPRDS; and any such other information that is necessary for the subsequent commencement of the Remedial Design as set forth in Subsection 4.7 of the RD Work Plan. (It should be noted that the actual commencement of the work items specified in Subsection 4.7 for Remedial Design are beyond the scope of this Consent Order).

(ii) Cost-Effectiveness and Treatability Studies. The Cost-Effectiveness and Treatability Studies shall, at a minimum, address all matters described in Subsection 4.6 (Task 6) of the attached RD Work Plan. This section of the report should include proposed findings and recommendations concerning the cost-effectiveness of the slurry walls proposed in the ROD, the cost-effectiveness of leachate treatment alternatives, and the technical practicability and cost-effectiveness of alternative cap design configurations.

Within thirty (30) days of submission of the Preliminary DDER to EPA, a meeting shall be held between EPA and Respondents to discuss the Preliminary DDER.

#### C. FINAL DESIGN DATA EVALUATION REPORT

If, subsequent to the meeting concerning the Preliminary DDER, EPA approves the Preliminary DDER in writing, the Preliminary DDER shall become the Final Design Data Evaluation Report ("Final DDER"). If, however, EPA disapproves or requires revisions to the Preliminary DDER, in whole or in part, which disapproval or proposed revisions shall be provided in writing with reasons therefor, or if EPA requires additional work to be conducted pursuant to paragraph 47 of this Consent Order, Respondents shall amend and submit to EPA a Final DDER which is responsive to the

directions in all EPA written comments within thirty (30) days of receipt of EPA's comments, or within thirty (30) days of completion of any additional work required pursuant to paragraph 47, whichever is later.

34. EPA reserves the right to comment on, and direct changes to all deliverables. Subject only to the dispute resolution provision of this Order to the extent that such provision is applicable, Respondents must fully correct all deficiencies and incorporate and integrate all information and comments supplied by EPA either in subsequent or resubmitted deliverables.

35. Respondents shall not proceed further with any subsequent activities or tasks until receiving EPA approval for the POP and the Preliminary DDER. While awaiting EPA approval on these deliverables, Respondents shall proceed with all other tasks and activities which may be conducted independently of these deliverables, in accordance with the schedule set forth in this Consent Order.

36. In the event that Respondents amend or revise a report, plan or other submittal upon receipt of EPA comments, if EPA in its sole discretion subsequently disapproves of the revised submittal, or if subsequent submittals do not fully reflect EPA's directions for changes, EPA retains the right in its sole discretion to seek stipulated or statutory penalties (subject to the dispute resolution provision of this Order to the extent that such provision is applicable); perform its own studies, complete the SPRDS (or any portion of the SPRDS) under CERCLA and the NCP, and seek reimbursement from the Respondents for its costs; and/or seek any other appropriate relief.

37. In the event that EPA takes over some of the tasks, but not the preparation of the Final DDER, Respondents shall incorporate and integrate information supplied by EPA into the Final DDER.

38. Neither failure of EPA to expressly approve or disapprove of Respondents' submissions within a specified time period(s), nor the absence of comments, shall be construed as approval by EPA.

39. Respondents shall, prior to any off-Site shipment of hazardous substances from the Site to an out-of-state waste management facility, provide written notification to the appropriate state environmental official in the receiving state and to EPA's Project Coordinator of such shipment of hazardous substances. However, the notification of shipments shall not apply to any such off-Site shipments when the total volume of such shipments will not exceed 10 cubic yards.

(a) The notification shall be in writing, and shall include the following information, where available: (1) the name and location of the facility to which the hazardous substances are to be shipped; (2) the type and quantity of the hazardous substances to be shipped; (3) the expected schedule for the shipment of the hazardous substances; and (4) the method of transportation. Respondents shall notify the receiving state of major changes in the shipment plan, such as a decision to ship the hazardous substances to another facility within the same state, or to a facility in another state.

(b) The identity of the receiving facility and state will be determined by Respondents following the award of the contract for the SPRDS. Respondents shall provide all relevant information, including information under the categories noted in paragraph 39(a) above, on the off-Site shipments, as soon as practical after the award of the contract and before the hazardous substances are actually shipped.

#### **VIII. NOTIFICATION AND REPORTING REQUIREMENTS**

40. All reports and other documents submitted by Respondents to EPA (other than the monthly progress reports referred to below) which purport to document Respondents' compliance with the terms of this Order shall be signed by an individual who will certify that he/she has been fully authorized by Respondents to submit such a document and to legally bind all Respondents thereto.

41. Until the termination of this Order, Respondents shall prepare and provide EPA with written monthly progress reports which: (1) describe the actions which have been taken toward achieving compliance with this Order during the previous month; (2) include all results of sampling, tests, modelling and all other data (including raw data) received or generated by or on behalf of Respondents during the previous month in the implementation of the work required hereunder (unless that data has already been submitted by Respondents to EPA pursuant to Section VII, above); (3) describe all actions, data and plans which are scheduled for the next two months and provide other information relating to the progress of work as is customary in the industry; (4) include information regarding percentage of completion, all delays encountered or anticipated that may affect the future schedule for completion of the work required hereunder, and a description of all efforts made to mitigate those delays or anticipated delays. These progress reports shall be submitted to EPA by Respondents by the tenth (10th) day of every month following the effective date of this Order.

42. Upon the occurrence of any event during performance of the work required hereunder which event, pursuant to Section 103 of CERCLA, requires reporting to the National Response Center, Respondents shall, within twenty-four (24) hours, orally notify

the EPA Project Coordinator (or, in the event of the unavailability of the EPA Project Coordinator, the Chief of the Western New York Superfund Section I of the Emergency and Remedial Response Division of EPA Region II), in addition to the reporting required by Section 103. Within twenty (20) days of the onset of such an event, Respondents shall furnish EPA with a written report setting forth the events which occurred and the measures taken, and to be taken, in response thereto.

43. All work plans, reports, notices and other documents required to be submitted to EPA under this Order shall be sent by certified mail, return receipt requested, by overnight delivery or by courier to the following addressees:

7 copies: Chief, Western New York Superfund Section I  
(including Emergency and Remedial Response Division  
1 un-bound United States Environmental Protection Agency  
copy) 26 Federal Plaza, Room 29-100  
New York, New York 10278

Attention: John J. O'Dell, Remedial Project  
Manager

1 copy: Chief, New York/Caribbean Superfund Branch  
Office of Regional Counsel  
United States Environmental Protection Agency  
26 Federal Plaza, Room 437  
New York, New York 10278

Attention: George A. Shanahan  
Volney Landfill Site Attorney

5 copies: Western Field Services Section  
Bureau of Construction Services  
New York State Department of Environmental  
Conservation  
50 Wolf Road  
Albany, New York 12233-7010

Attention: James Van Hoesen, P.E., Chief  
Western Field Services Section

1 copy: Mr. Ronald Tramontano  
Chief  
Bureau of Environmental Exposure Investigation  
Division of Environmental Health Assessment  
New York State Department of Health  
2 University Place  
Albany, NY 12203

1 copy: Mr. Charles Branagh  
Regional Hazardous Waste Remediation Engineer



NYSDEC Region 7 Office  
615 Erie Boulevard West  
Syracuse, NY 13204-2400

44. Respondents shall give EPA at least fourteen (14) days advance notice of all field work or field activities to be performed by Respondents pursuant to this Order.

**IX. MODIFICATION OF THE WORK PLAN**

45. If at any time during the SPRDS process, Respondents identify a need for additional data, a memorandum documenting the need for additional data shall be submitted to the EPA Project Coordinator within 20 days of identification. EPA in its discretion will determine whether the additional data will be collected by Respondents and incorporated into reports and deliverables required pursuant to this Order. If it will not otherwise delay the completion and submittal of any report or deliverable required by this Order, Respondents may collect additional data notwithstanding any EPA determination that such data are not to be collected as part of the SPRDS process. Respondents reserve any rights they may have to utilize such additional data in any comments submitted by Respondents to EPA concerning EPA's proposals for remediation at the Site.

46. In the event of conditions posing an immediate threat to human health or welfare or the environment, Respondents shall notify EPA and NYSDEC immediately. In the event of unanticipated or changed circumstances at the Site which may interfere with or delay Respondent's performance hereunder, Respondents shall notify the EPA Project Coordinator (or, in the event of the unavailability of the EPA Project Coordinator, the Chief of the Western New York Superfund Section I of the Emergency and Remedial Response Division of EPA Region II) by telephone within 48 hours of discovery of the unanticipated or changed circumstances. In addition to the authorities in the NCP, in the event that EPA determines that the immediate threat or the unanticipated or changed circumstances warrant changes in the SPRDS and/or POP, EPA will modify or amend the SPRDS and/or POP in writing accordingly or direct Respondents to do so. Respondents shall implement the SPRDS and/or POP as modified or amended and as approved by EPA.

47. EPA may determine that, in addition to tasks defined in Subsections 3.3, 4.3 (Task 3), 4.4 (Task 4), 4.5 (Task 5), and 4.6 (Task 6) of the RD Work Plan, other data gathering and analytical activities may be necessary to accomplish the objectives of the SPRDS set forth in paragraphs 7(a), 29, and 33 above. EPA may require, pursuant to this Order, that the Respondents perform these data gathering or analytical activities in addition to those required by the initially-approved Work

Plan, including any approved modifications, if EPA determines that such actions are necessary for a complete SPRDS. Subject to EPA resolution of any dispute pursuant to Section XVI, Respondents shall implement the additional tasks which EPA determines are necessary. The additional work shall be completed according to the standards, specifications, and schedule set forth or approved by EPA in a written modification to the Work Plan or written Work Plan supplement. EPA reserves the right to conduct the work itself at any point, to seek reimbursement from Respondents, and/or to seek any other appropriate relief.

**X. PROJECT COORDINATORS, OTHER PERSONNEL**

48. EPA has designated the following individual as its Project Coordinator with respect to the Site:

John J. O'Dell  
Remedial Project Manager  
Western New York Superfund Section I  
Emergency and Remedial Response Division  
U.S. Environmental Protection Agency  
26 Federal Plaza, Room 29-100  
New York, N.Y. 10278  
(212) 264-1263

Not later than seven (7) days after the effective date of this Order, Respondents shall select their own Project Coordinator and shall notify EPA in writing of the name, address, qualifications, job title and telephone number of that Project Coordinator. The Respondent's Project Coordinator shall have technical expertise sufficient to adequately oversee all aspects of the work contemplated by this Order. Respondents' and EPA's Project Coordinators shall be responsible for overseeing the implementation of this Order and coordinating communications between EPA and Respondents. EPA and Respondents may change their respective Project Coordinators. Such a change shall be accomplished by notifying the other party in writing at least ten days prior to the change where possible, and concurrently with the change in the event that advance notification is not possible.

49. EPA's Project Coordinator shall have the authority lawfully vested in a Remedial Project Manager (RPM) and On-Scene Coordinator (OSC) by the NCP. In addition, EPA's Project Coordinator shall have the authority, consistent with the NCP, to halt any work required by this Order, and to take any necessary response action when s/he determines that conditions at the Site may present an immediate endangerment to public health or welfare or the environment. The absence of the EPA Project Coordinator from the area under study pursuant to this Order shall not be cause for the stoppage or delay of work.

50. All activities required of Respondents under the terms of this Order shall be performed only by qualified persons possessing all necessary permits, licenses, and other authorizations required by applicable law.

#### **XI. OVERSIGHT**

51. During the implementation of the requirements of this Order, Respondents and their contractors and subcontractors shall be available for such conferences and inspections with EPA as EPA may reasonably determine are necessary for EPA to adequately oversee the work being carried out and/or to be carried out.

52. Respondents and their employees, agents, contractors and consultants shall cooperate with EPA in its efforts to oversee Respondents' implementation of this Order.

#### **XII. SAMPLING, ACCESS AND DATA AVAILABILITY/ADMISSIBILITY ADMINISTRATIVE RECORD**

53. If any area to which access is required in order to implement the SPRDS is owned in whole or in part by parties other than those bound by this Order, Respondents shall obtain, or use their best efforts to obtain, access agreements from the present owner(s) within forty-five (45) days of the approval of the POP. Such agreements shall provide access for EPA, its contractors and oversight officials, NYSDEC and its contractors, and the Respondents or their authorized representatives, and such agreements shall specify that Respondents are not EPA's representatives with respect to liability associated with Site activities. Copies of such agreements shall be provided to EPA prior to Respondents' initiation of field activities. If access agreements are not obtained within the time referenced above, Respondents shall immediately notify EPA of their failure to obtain access and provide EPA with a written report within seven days thereafter. Any such report shall be written in accordance with the provisions of paragraph 75 herein if Respondents claim that the circumstances causing their failure to obtain access constitute a force majeure event. EPA may, in its sole discretion, obtain access for the Respondents, perform those tasks or activities with EPA contractors, or terminate the Order in the event that Respondents cannot obtain access agreements. In the event that EPA performs those tasks or activities with EPA contractors and does not terminate the Order, Respondents shall reimburse EPA for all costs incurred in performing such activities and shall perform all other activities not requiring access to the given property. Respondents additionally shall integrate the results of any such tasks undertaken by EPA into their reports and deliverables. Furthermore, the Respondents agree to indemnify the U.S. Government as specified in Section XXII of this Order. Respondents also shall reimburse EPA pursuant to Section XIX of this Order for all costs and attorney

fees incurred by the United States to obtain access for the Respondents.

54. EPA will determine whether any additions shall be made to the administrative record file pursuant to 40 C.F.R. Part 300, Subpart I. Respondents shall submit to EPA documents developed during the course of the SPRDS upon which the Source Control RD may be based. Respondents shall provide copies of plans, task memoranda including documentation of field modifications, recommendations for further action, quality assurance memoranda and audits, raw data, field notes, laboratory analytical reports and other reports. The requirements contained in this and subsequent paragraphs in this Order for the submission of documents and reports shall not be construed as a waiver by Respondents of any rights to confidentiality for documents subject to attorney-client privilege or which are attorney work product; provided, however, that any such document that is withheld from EPA under such a claim of privilege or work product shall be identified by date, author, recipients and subject matter, shall be redacted so that all factual information, referenced above or otherwise specified in this Order, is submitted to EPA; and provided further, however, that Respondents shall identify in writing to EPA the basis of withholding of each such document or portion thereof and shall preserve each such document as a record or document that relates to the Site as required by paragraph 62. In no event, shall Respondents assert a claim of privilege or work product with respect to any data generated pursuant to this Order. Respondents shall additionally submit any previous studies conducted under state, local or other federal authorities relating to the selection of the response action, and, unless subject to any rights of confidentiality as provided above, all communications between Respondents and state, local or other federal authorities concerning selection of the response action.

55. At all reasonable times, EPA and its authorized representatives shall have the authority to enter and freely move about all property at the Site and off-Site areas where work, if any, is being performed, for the purposes of inspecting conditions, activities, the results of activities, records, operating logs, and contracts related to the Site or Respondents and their contractor pursuant to this Order; reviewing the progress of the Respondents in carrying out the terms of this Order; conducting such tests as EPA or its authorized representatives deem necessary; using a camera, sound recording device or other documentary type equipment; and verifying the data submitted to EPA by the Respondents. EPA and its authorized representatives shall exercise such authority, to the extent practicable consistent with such authority, in a manner that is not disruptive of the activities being undertaken by Respondents pursuant to this Order. The Respondents shall allow these persons to inspect and copy all records, files, photographs,

documents, sampling and monitoring data, and other writings related to work undertaken in carrying out this Order, except, as provided in paragraph 54 for those materials which are subject to attorney-client privilege or which are attorney work product. All parties with access to the Site under this paragraph shall comply with all approved health and safety plans.

56. All data, records, photographs and other information created, maintained or received by Respondents or their agents, contractors or consultants in connection with implementation of the work under this Order, including but not limited to contractual documents, quality assurance memoranda, raw data, field notes, laboratory analytical reports, invoices, receipts, work orders and disposal records, shall, without delay, be made available to EPA on request, except, as provided in paragraph 54, for those materials which are subject to attorney-client privilege or which are attorney work product. EPA shall be permitted to copy all such documents and other items.

57. Upon request by EPA, or its designated representatives, Respondents shall provide EPA or its designated representatives with duplicate and/or split samples of any material sampled in connection with the implementation of this Order, or allow EPA or its designated representatives to take such samples. EPA will provide the validated sample results to the Respondents.

58. Respondents may assert a claim of business confidentiality under 40 C.F.R. §2.203, covering part or all of the information submitted to EPA pursuant to the terms of this Order, provided such claim is allowed by section 104(e)(7) of CERCLA, 42 U.S.C. §9604(e)(7). This claim shall be asserted in the manner described by 40 C.F.R. §2.203(b) and substantiated at the time the claim is made. Information determined to be confidential by EPA will be given the protection specified in 40 C.F.R. Part 2. If no such claim accompanies the information when it is submitted to EPA, it may be made available to the public by EPA or New York State without further notice to Respondents. Respondents agree not to assert business confidentiality claims with respect to any data related to Site conditions, sampling, or monitoring.

59. Notwithstanding any other provision of this Order, EPA hereby retains all of its information gathering, access and inspection authority under CERCLA, the Solid Waste Disposal Act, 42 U.S.C. §6901, et seq., and any other applicable statute or regulations.

60. In entering into this Order, Respondents waive any objections to the validity of any data gathered, generated, or evaluated by Respondents in the performance or oversight of the work that has been validated according to the quality assurance/quality control (QA/QC) procedures required pursuant to this Order.

### **XIII. OTHER APPLICABLE LAWS**

61. Respondents shall comply with all laws that are applicable when performing the SPRDS. No local, state, or federal permit shall be required for any portion of the work required hereunder which is conducted entirely on-Site, where such work is carried out in compliance with section 121 of CERCLA; however, Respondents must comply with the substantive requirements that would otherwise be included in such permits. For any off-Site work performed pursuant to this Order, Respondents shall obtain all permits necessary under applicable laws and shall submit timely applications and requests for any such permits. This Order is not, nor shall it act as, a permit issued pursuant to any federal or state statute or regulation.

### **XIV. RECORD PRESERVATION**

62. All records and documents, or relevant portions thereof, in EPA's and Respondents' possession that relate to the performance of the SPRDS shall be preserved during the conduct of this Order and for a minimum of 10 years after commencement of construction of any remedial action following the completion of the SPRDS. Respondents shall acquire and retain at least one copy of all such documents that relate to the performance of the SPRDS and are in the possession of their employees, agents, accountants, contractors, or attorneys. After this 10-year period, Respondents shall notify EPA at least 90 days before such documents are scheduled to be destroyed. If EPA requests that such documents be saved, Respondents shall, at no cost to EPA, give EPA such documents or copies of the documents, except, as provided in paragraph 54, for those materials that are subject to attorney-client privilege or which are attorney work product (which materials either shall be retained for an additional period of one year following notice of scheduled destruction, or retained pending resolution of any ongoing proceedings concerning such claims of privilege or work-product commenced during such additional one-year period, whichever is later).

### **XV. COMMUNITY RELATIONS**

63. Respondents shall cooperate with EPA in providing information relating to the work required hereunder to the public. To the extent requested by EPA, Respondents shall participate in the preparation of all appropriate information disseminated to the public and make presentations at, and participate in, public meetings which may be held or sponsored by EPA to explain activities at or concerning the Site.

## **XVI. DISPUTE RESOLUTION**

64. Any dispute concerning the deliverables required pursuant to Section VII, paragraph 33, the modification of the Work Plan pursuant to Section IX of this Order, the amount of stipulated penalties as referenced in paragraph 71, the demand for payments as provided by Section XIX, and force majeure as provided by paragraph 77, shall be resolved as follows: If the Respondents object to any EPA determination made pursuant to the above-referenced provisions of the Order, including without limitation any EPA notice of disapproval provided for herein, Respondents shall notify EPA's Project Coordinator in writing of their objections within 14 days of receipt of the written determination. Respondents' written objections shall define the dispute, state the basis of Respondents' objections, and be sent by certified mail, return receipt requested, by overnight delivery, or by courier. EPA and the Respondents then have an additional 14 days to reach agreement. At the end of said 14 days, EPA may provide a written statement of the extent to which, if at all, it agrees to modify its determination in response to the Respondents' objections. If a complete agreement is not reached within 14 days, Respondents may, within 7 days of the conclusion of the aforementioned 14-day period or receipt of any modified determination from EPA, whichever is later, request a determination by the Chief of the New York/Caribbean Superfund Branch I of the Emergency and Remedial Response Division, EPA Region II (hereinafter, the "Chief"). Such a request by Respondents shall be made in writing. The Chief's determination shall be in writing with reasons therefor, and shall be EPA's final decision. Respondents shall proceed in accordance with EPA's final decision regarding the matter in dispute, regardless of whether Respondents agree with the decision. If the Respondents do not agree to perform or do not actually perform the work in accordance with EPA's final decision, EPA reserves the right in its sole discretion to conduct the work itself, to seek reimbursement from the Respondents of the costs of that work, to seek enforcement of the decision, to seek stipulated penalties (for the period of time prior to EPA's commencement of work, if EPA conducts the work itself), and/or to seek any other appropriate relief.

65. Respondents are not relieved of their obligations to perform and conduct activities and submit deliverables on the schedules which are approved by EPA and applicable to the work required pursuant to this Order, while a matter is pending in dispute resolution. However, if the dispute and its resolution cause a delay which makes it impossible for Respondents to meet any deadline set forth in or established pursuant to this Order, such deadline shall be extended by a period of time not to exceed the time of the delay resulting from the dispute and its resolution and stipulated penalties shall not accrue for the period for which the deadline is extended. Respondents shall not be

entitled to any extension if EPA determines that Respondent's disagreement with EPA's comments or position is not in good faith or otherwise lacks a reasonable basis. Notwithstanding any of the foregoing, if Respondents request an extension of any deadline (not otherwise the subject of dispute resolution pursuant to the provisions of this Order), and if EPA declines to grant such an extension, any delay caused solely by the resolution of such a dispute shall not entitle the Respondents to any extension. The invocation of dispute resolution does not stay the accrual of stipulated penalties under this Order.

#### **XVII. DELAY IN PERFORMANCE/STIPULATED PENALTIES**

66. Subject to the force majeure provision of Section XVIII of this Consent Order and the dispute resolution provisions of this Order to the extent that dispute resolution is applicable, for each day that Respondents fail to submit a deliverable in a timely manner, fail to submit an original deliverable of sufficient quality as to constitute a good faith submittal of such a deliverable, or fail to revise a deliverable to fully conform with EPA required revisions, Respondents shall be jointly and severally liable for stipulated penalties as set forth in paragraphs 69 and 70. Penalties begin to accrue on the day that performance is due or a violation occurs, and shall continue to accrue until the noncompliance is corrected, or up to and including the 30th day of noncompliance, whichever occurs earlier. EPA will provide written notice for those violations for which EPA is assessing stipulated penalties; nevertheless, penalties shall accrue from the day a violation commences. Payment shall be due within 60 days of receipt of a demand letter from EPA, or within 60 days of completion of dispute resolution under Section XVI, if a matter subject to on-going dispute resolution pursuant to this Order is inseverable from the matter giving rise to stipulated penalties, or the amount of stipulated penalties is the subject of dispute resolution under this Order.

67. Respondents shall pay interest on the unpaid balance, which shall begin to accrue at the end of the 60-day period referred to in the preceding paragraph, at the rate established by the Department of Treasury pursuant to 31 U.S.C. § 3717. Respondents thereafter shall further pay a handling charge of 1 percent, to be assessed at the end of each 30-day period, and a 6 percent per annum penalty charge, to be assessed if the penalty is not paid in full within 90 days after it is due.

68. Respondents shall make all payments due to EPA by forwarding a cashier's or certified check, made payable to "Hazardous Substance Superfund" to:

EPA - Region 2  
Attn: Superfund Accounting  
P.O. Box 360188M  
Pittsburgh, PA 15251



Checks shall identify the name of the Site, the Site identification number, the account number, and the index number of this Order. A copy of the check and of the accompanying transmittal letter shall be sent to the first two addressees listed in paragraph 43 above.

69. For the following major deliverables, stipulated penalties shall accrue in the amount of \$1,000 per day, per violation, for the first seven days of noncompliance; \$2,000 per day, per violation, for the 8th through 14th day of noncompliance; and \$4,000 per day, per violation, for the 15th day through the 30th day of noncompliance.

- 1) An original and any revised POP.
- 2) Preliminary Design Data Evaluation Report.
- 3) Final Design Data Evaluation Report.

70. For the monthly progress reports, stipulated penalties shall accrue in the amount of \$250 per day, per violation, for the first week of noncompliance; \$500 per day, per violation, for the 8th through 14th day of noncompliance; and \$1,000 per day, per violation, for the 15th day through the 30th day of noncompliance.

71. Respondents may dispute EPA's right to the stated amount of penalties by invoking the dispute resolution procedures under Section XVI herein. Penalties shall accrue during the dispute resolution period, but need not be paid pending resolution of such a dispute. If Respondents do not prevail upon resolution, all penalties shall be due to EPA within 60 days of resolution of the dispute. If Respondents prevail upon resolution, no penalties shall be paid.

72. In the event that EPA requires that corrections to an interim deliverable be reflected in the next deliverable, rather than requiring that the interim deliverable be resubmitted, stipulated penalties for that interim deliverable shall cease to accrue on the date of such decision by EPA.

73. The stipulated penalties provisions of this Order do not preclude EPA from pursuing any other remedies or sanctions which are available to EPA because of the Respondents' failure to comply with this Order, including but not limited to conduct of all or part of the SPRDS by EPA. Payment of stipulated penalties does not alter Respondents' obligation to complete performance under this Order.

#### **XVIII. FORCE MAJEURE**

74. "Force majeure", for purposes of this Order, is defined as any event arising from causes beyond the control of Respondents and of any entity controlled by Respondents, including their contractors and subcontractors, that delays the timely performance of any obligation under this Order, notwithstanding Respondents' best efforts to avoid the delay. The requirement that the Respondents exercise "best efforts to avoid the delay" includes using best efforts to anticipate any potential force majeure event and best efforts to address the effects of any potential force majeure event (1) as it is occurring and (2) following the potential force majeure event, such that the delay is minimized to the greatest extent practicable. Examples of events that are not force majeure events include, but are not limited to, increased costs or expenses of any work to be performed under this Order or the financial difficulty of Respondents to perform such work.

75. If any event occurs or has occurred that may delay the performance of any obligation under this Order, whether or not caused by a force majeure event, Respondents shall notify by telephone the EPA Project Coordinator or, in his or her absence, the Chief of the New York/Caribbean Superfund Branch I of the Emergency and Remedial Response Division, EPA Region II, within 48 hours of when the Respondents knew or should have known that the event might cause a delay. Within seven business days thereafter, Respondents shall provide in writing: the reasons for the delay; Respondents' rationale for interpreting the circumstances as constituting a force majeure event (should that be Respondents' claim); the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; and a schedule for implementation of any measures to be taken to mitigate the effect of the delay. Such written notice shall be accompanied by all available pertinent documentation including, but not limited to, third-party correspondence. Respondents shall exercise best efforts to avoid or minimize any delay and any effects of a delay. Failure to comply with the above requirements shall preclude Respondents from asserting any claim of force majeure.

76. If EPA agrees that the delay or anticipated delay is attributable to force majeure, the time for performance of the obligations under this Order that are directly affected by the force majeure event will be extended for a period of time, determined by EPA, equal to the delay caused by the force majeure event. The time for performance of any subsequent obligation shall not be extended unless the requirements of this Section XVIII for a force majeure event are independently satisfied for said subsequent obligation.

77. If EPA does not agree that the delay or anticipated delay has been or will be caused by a force majeure event, or if Respondents object to the length of the extension determined by EPA pursuant to the preceding paragraph, the issue shall be subject to the dispute resolution procedures set forth in Section XVI of this Order. In any such proceeding, to qualify for a force majeure defense, Respondents shall have the burden of proving that the delay or anticipated delay has been or will be caused by a force majeure event, that the duration of the delay was or will be warranted under the circumstances, that Respondents did use or are using their best efforts to avoid and mitigate the effects of the delay, and that Respondents complied with the requirements of paragraph 75.

78. Should Respondents carry the burden set forth in paragraphs 74 and 77, the delay at issue shall be deemed not to be a violation of the affected obligation of this Order and shall not make the Respondents liable for stipulated penalties contained in Section XVII of this Order.

#### **XIX. REIMBURSEMENT**

79. A. Respondents hereby agree to reimburse EPA for all response costs, including oversight costs, incurred by the U.S. Government with respect to the SPRDS which are not inconsistent with the NCP. EPA will periodically transmit to Respondents billings for such costs. Those billings will be accompanied by a printout of cost data in EPA's financial management system, supplemented, if necessary, by a letter report(s) documenting additional costs incurred by EPA which are not reflected in that printout. The billings will also be accompanied by a calculation of EPA's indirect costs.

Respondents shall, within thirty (30) days of receipt of each such billing, remit a cashier's or certified check for the amount of those costs, made payable to the "Hazardous Substance Superfund," unless such billing is challenged as provided for in subparagraph B of this paragraph.

B. Respondents may invoke the Dispute Resolution procedures of Section XVI of this Order with respect to payment demands submitted to Respondents by EPA under subparagraph A., above. However, Respondents agree to limit any disputes concerning such costs to mathematical errors and the inclusion of costs outside the scope of this Order or inconsistent with the NCP. Respondents shall identify any contested costs and the basis of their objection. All undisputed costs shall be remitted by Respondents in accordance with the schedule set forth above. Disputed costs shall be paid by Respondents into an escrow account held by the Office of the Oswego County Treasurer while

the dispute is pending. Following the resolution of the dispute, EPA shall advise the Office of the Oswego County Treasurer with respect to the appropriate distribution of the escrowed monies. Respondents bear the burden of establishing an EPA mathematical error or the inclusion of costs outside the scope of this Order or inconsistent with the NCP.

C. Each of the payments required by sub-paragraphs A. and B. above shall be mailed to the following address:

EPA - Region 2  
Attn: Superfund Accounting  
P.O. Box 360188M  
Pittsburgh, PA 15251

Checks shall include the name of the Site, the Site identification number, the account number, and the index number of this Order. A copy of each check and of the accompanying transmittal letter shall be sent to the first two addressees listed in paragraph 43 above.

D. Respondents shall pay interest on any amounts overdue under subparagraphs A. and B., above. Such interest shall begin to accrue on the first day that the respective payment is overdue. No interest shall accrue on any such payment during the period that it is the subject of dispute resolution procedures pursuant to subparagraph B., above. Interest shall accrue at the rate of interest on investments of the Hazardous Substances Superfund, in accordance with Section 107(a) of CERCLA.

#### **XX. RESERVATIONS OF RIGHTS AND REIMBURSEMENT OF OTHER COSTS**

80. EPA reserves the right to bring an action against the Respondents (and/or any other responsible parties) under Section 107 of CERCLA for recovery of all response costs incurred by the United States at the Site that are not reimbursed by the Respondents, including, but not limited to oversight costs, any costs incurred in the event that EPA performs the SPRDS or any part thereof, and any future costs incurred by the United States in connection with response activities conducted under CERCLA at this Site. Except as expressly provided in Section XXI, Respondents reserve any rights they may have to oppose and defend against such claims and actions and to assert any and all claims they may have against EPA and/or any person, or governmental agency.

81. EPA reserves the right to bring an action against Respondents to enforce the requirements of this Order, to collect stipulated penalties assessed pursuant to Section XVII of this Order, and to seek penalties pursuant to Section 109 of CERCLA, 42 U.S.C. §9609, or any other applicable provision of law.

Except as otherwise provided by this Order, Respondents reserve any rights they may have to bring any action otherwise available against any person as defined in CERCLA Section 101(21).

82. Except as expressly provided in this Order, each party reserves all rights and defenses it may have. Nothing in this Order shall affect EPA's response or enforcement authorities including, but not limited to, the right to seek injunctive relief, stipulated penalties, statutory penalties, and/or punitive damages.

83. Following satisfaction of the requirements of this Order, Respondents shall have resolved their liability to EPA for the work performed by Respondents pursuant to this Order. Upon execution of this Order, Respondents shall not be liable for claims for contribution regarding such matters to the extent provided in Section 113(f) and Section 122 of CERCLA. Respondents are not released from liability, if any, for any response actions taken beyond the scope of this Order regarding removals, other operable units, remedial design/remedial action for this operable unit, or activities arising pursuant to Section 121(c) of CERCLA.

84. The Respondents reserve their rights to seek contribution from any potentially responsible parties not signing this Consent Order.

#### **XXI. OTHER CLAIMS**

85. In entering into this Order, Respondents waive any right to seek reimbursement under Section 106(b) of CERCLA with respect to work undertaken pursuant to this Order. Respondents also waive any right to present a claim with respect to such costs under Section 111 or 112 of CERCLA or under any other provision of law. This Order does not constitute any decision on preauthorization of funds under Section 111(a)(2) of CERCLA.

86. Nothing in this Order shall constitute or be construed as a release from any claim, cause of action or demand in law or equity against any person, firm, partnership, subsidiary or corporation not a signatory to this Order for any liability it may have arising out of or relating in any way to the generation, storage, treatment, handling, transportation, release, or disposal of any hazardous substances, pollutants, or contaminants found at, taken to, or taken from the Site. Nothing herein shall constitute a finding that there are no other responsible parties with respect to the release and threatened release of hazardous substances, pollutants, or contaminants at or from the Site.

87. Respondents shall bear their own costs and attorneys fees.

## **XXII. FINANCIAL ASSURANCE, INSURANCE, AND INDEMNIFICATION**

88. Respondents shall establish and maintain a financial instrument or trust account or other financial mechanism acceptable to EPA, funded sufficiently to perform the work and any other obligations required under this Order, including a margin for cost overruns. Within 15 days after the effective date of this Order, Respondents shall initiate funding of the financial instrument or trust account in accordance with the requirements of this Section XXII.

89. If at any time the net worth of the financial instrument or trust account is insufficient to perform the work and other obligations under the Order for the upcoming quarter, Respondents shall provide written notice to EPA within 7 days after the net worth of the financial instrument or trust account becomes insufficient. The written notice shall describe why the financial instrument or trust account is funded insufficiently and explain what actions have been or will be taken to fund the financial instrument or trust account adequately.

90. (a) Prior to commencement of any work under this Order, Respondents shall provide evidence to EPA demonstrating that one or more of the Respondents passes the financial test described in 40 CFR 264.147(f) corresponding to liability coverage in the amount of ten million dollars.

(b) For the duration of this Order, Respondents shall satisfy, or shall use best efforts to ensure that their contractors or subcontractors satisfy, all applicable laws and regulations regarding the provision of employer's liability insurance and workmen's compensation insurance for all persons performing work on behalf of Respondents, in furtherance of this Order.

91. Respondents agree to indemnify and hold the United States Government, its agencies, departments, agents, and employees harmless from any and all claims or causes of action arising from or on account of acts or omissions of Respondents, their employees, agents, servants, receivers, successors, or assignees, or any other persons acting on behalf of Respondents, including, but not limited to, firms, corporations, subsidiaries and contractors, in carrying out activities under this Order. The United States Government or any agency or authorized representative thereof shall not be held as a party to any contract entered into by Respondents in carrying out activities under this Order.

92. Neither the United States Government nor any agency thereof shall be liable for any injuries or damages to persons or property resulting from acts or omissions by Respondents or Respondents' officers, directors, employees, agents, contractors,

consultants, receivers, trustees, successors or assigns in carrying out any action or activity pursuant to this Order. The United States Government or any agency or authorized representative thereof shall not be held as a party to any contract entered into by Respondents in carrying out activities under this Order.

#### **XXIII. EFFECTIVE DATE AND SUBSEQUENT MODIFICATION**

93. The effective date of this Order shall be the date it is signed by EPA.

94. This Order may be amended by mutual agreement of EPA and Respondents. Amendments shall be in writing and shall be effective when signed by EPA. EPA Project Coordinators do not have the authority to sign amendments to the Order.

95. No informal advice, guidance, suggestions, or comments by EPA regarding reports, plans, specifications, schedules, and any other writing submitted by the Respondents will be construed as relieving the Respondents of their obligation to obtain such formal approval as may be required by this Order. Any deliverables, plans, technical memoranda, reports (other than progress reports), specifications, schedules and other documents required to be submitted to EPA pursuant to this Order shall, upon approval by EPA, be deemed to be incorporated in and an enforceable part of this Order.

#### **XXIV. TERMINATION AND SATISFACTION**

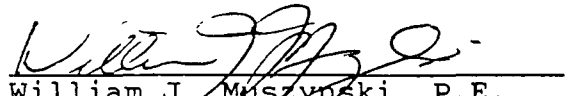
96. This Order shall terminate when the Respondents provide written certification to EPA that all activities required under this Order -- including any additional work, payment of costs in accordance with Section XIX of this Order, and payment of any stipulated penalties demanded by EPA -- have been performed and EPA has, in writing, approved the certification. EPA's approval shall not unreasonably be withheld. The notice approving the certification shall not, however, terminate Respondents' obligation to comply with any of Respondents' remaining obligations under this Order, including record preservation and the payment of any costs specified in Section XIX of this Order which have not yet, at that time, been paid by Respondents.

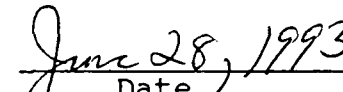
97. The certification referred to in the preceding paragraph shall be signed by an authorized representative for each of the Respondents. The representative(s) shall make the following attestation:

"I certify that the information contained in or accompanying this certification is true, accurate, and complete."

"As to the following specifically identified portion(s) of this submission which I cannot attest to as true, accurate, and complete on the basis of personal knowledge, I hereby certify that I have fully investigated the bases of this submission, and the submission itself in its entirety for the purpose of making this certification, and have concluded that it is true, accurate, and complete. I further certify, under the penalty of perjury under the laws of the United States and of the States of Respondents' incorporation, that I am fully responsible for its content and that I am fully authorized to legally bind the Respondents hereto."

U.S. ENVIRONMENTAL PROTECTION AGENCY

  
\_\_\_\_\_  
William J. Muszynski, P.E.  
Acting Regional Administrator  
U.S. Environmental Protection Agency  
Region II

  
\_\_\_\_\_  
Date